

## SENATE BILL No. 246

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1; IC 32-24.

**Synopsis:** Pipeline construction. Makes the following changes to the statute concerning voluntary pipeline construction guidelines for pipeline companies proposing to construct an interstate pipeline in Indiana: (1) Specifies that certain duties in administering the statute are the responsibility of the Indiana utility regulatory commission (IURC) instead of the IURC's pipeline safety division. (2) Requires pipeline companies to notify the IURC within a specified time before proposing to construct a pipeline in Indiana. (3) Requires the pipeline's notice to the IURC to include the proposed route of the pipeline and the designation of at least one project coordinator who will communicate with the IURC about the proposed project. (4) Sets forth the duties of a pipeline company's project coordinator. Amends applicable eminent domain statutes to provide that a pipeline company may not appropriate and condemn lands or easements in lands until the company complies with the statute concerning voluntary pipeline construction guidelines.

**Effective:** July 1, 2015.

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January 6, 2015, read first time and referred to Committee on Utilities.

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First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## SENATE BILL No. 246

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 8-1-8-1, AS AMENDED BY P.L.97-2012,  
2       SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2015]: Sec. 1. (a) A public utility, except in cities of the third  
4       class, engaged in the production, transmission, delivery, or furnishing  
5       of heat, light, water, or power or for the collection, treatment,  
6       purification, and disposal in a sanitary manner of liquid and solid  
7       sewage or furnishing facilities for transmission of intelligence by  
8       electricity to towns and cities and to the public in general or for the  
9       furnishing of elevator or warehouse service, either directly or  
10      indirectly, to or for the public, for the purpose of enabling it to perform  
11      its functions, may appropriate and condemn lands of individuals and  
12      private corporations, or any easement in any lands, necessary to the  
13      carrying out of its objects, whether the same be for its building,  
14      structures, dams, line of poles, wires, mains, conduits, and pipelines,  
15      or right-of-way to accommodate railway siding or switch tracks  
16      connecting its plant or plants with the tracks of any common carrier,



1 overflowage by backwater from its dams, waste, or sluiceways.

2 (b) However, within the limits of any incorporated town or city, the  
3 authority to appropriate does not:

4 (1) extend to lands situated in any city block in which more than  
5 fifty percent (50%) of the frontage is devoted to residence  
6 purposes;

7 (2) extend to common carriers engaged in the transportation of  
8 freight or passengers; or

9 (3) give to any public utility any right or authority to:

10 (A) appropriate any land or easement within the corporate  
11 limits of any city for overflowage by backwater from any dam;

12 (B) appropriate or acquire any dam, race, or sluiceway existing  
13 on May 31, 1921, or any interest in either, except to use water  
14 for condensation purposes;

15 (C) appropriate or acquire any pipeline laid or contained  
16 within the limits of private property; or

17 (D) authorize any corporation developing hydroelectric power  
18 to unreasonably interfere with or disturb the natural flow of the  
19 stream from which power may be derived. Lands or easements  
20 in lands acquired by appropriation and condemnation shall be  
21 held and enjoyed by the company for those purposes as though  
22 the land or easement had been acquired by purchase.

23 (c) If a not-for-profit sewer utility (as described in IC 8-1-2-125(a))  
24 appropriates or condemns land to acquire an easement or right-of-way  
25 necessary to carry out the not-for-profit sewer utility's objectives, the  
26 easement or right-of-way may not exceed fifty (50) feet in width.

27 (d) The appropriation and condemnation of lands and easements in  
28 lands authorized by this section must be done under the terms and  
29 conditions and in the manner prescribed by IC 32-24-1.

30 **(e) A pipeline company (as defined in IC 8-1-22.6-7) may not**  
31 **appropriate and condemn lands or easements in lands until the**  
32 **pipeline company complies with IC 8-1-22.6-9(b) and**  
33 **IC 8-1-22.6-10(a).**

34 SECTION 2. IC 8-1-22.5-1, AS AMENDED BY P.L.118-2006,  
35 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
36 JULY 1, 2015]: Sec. 1. As used in this chapter, unless otherwise  
37 provided:

38 (a) The term "gas" means natural gas, flammable gas, or gas which  
39 is toxic or corrosive.

40 (b) The term "transportation" means:

41 (1) the gathering, transmission, or distribution of gas, hazardous  
42 liquids, or carbon dioxide fluid by pipeline; or



(2) the storage of gas, hazardous liquids, or carbon dioxide fluids. The term does not include the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area which the commission may define as a nonrural area.

(c) The term "pipeline" means all parts of those physical facilities through which gas, hazardous liquids, or carbon dioxide fluid moves in transportation, including pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies, but excluding motor vehicles of all kinds and pipelines serving not ~~less~~ **more** than ten (10) customers with petroleum gas from a common source.

(d) The term "pipeline facilities" means and includes, without limitation, new and existing pipelines, rights-of-way and any equipment, facility, or building used in:

(1) transportation; or

(2) the treatment of gas, hazardous liquids, or carbon dioxide fluid during the course of transportation.

The term excludes motor vehicles of all kinds and pipelines serving not less than ten (10) customers with petroleum gas from a common source.

(e) The term "person" means any individual, firm, joint venture, partnership, corporation, limited liability company, association, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

(f) The term "municipality" means a city, county, or any political subdivision of the state.

(g) The term "division" means the pipeline safety division to be established under this chapter.

(h) The term "maximum allowable operating pressure" means the maximum pressure at which a pipeline or a segment of a pipeline may be operated.

(i) The term "hazardous liquid" means petroleum, petroleum products, or anhydrous ammonia.

(j) The term "carbon dioxide fluid" means a fluid consisting of more than ninety percent (90%) carbon dioxide molecules compressed to a supercritical state.

SECTION 3. IC 8-1-22.6-2.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS



[EFFECTIVE JULY 1, 2015]: **Sec. 2.8. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.**

SECTION 4. IC 8-1-22.6-9, AS ADDED BY P.L.110-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 9. (a) For purposes of this section, a pipeline company proposes to construct a pipeline in Indiana if it does any of the following:

(1) Files an application for a certificate of public convenience and necessity with the Federal Energy Regulatory Commission.

(2) Undertakes:

(A) environmental, engineering, or cultural surveys; or

(B) other studies or surveys;

in Indiana in preparation for filing an application described in subdivision (1).

(3) Holds public meetings or hearings in Indiana concerning a proposed pipeline.

(4) Enters upon land in Indiana for the purpose of determining the route or location of a proposed pipeline.

(5) Contacts landowners in Indiana for the purpose of negotiating the price for:

(A) easements; or

(B) other interests in land;

necessary for the construction of a pipeline.

(6) Undertakes other actions in **Indiana** in preparation for the construction of a pipeline.

**(b) A pipeline company shall notify the commission in writing at least sixty (60) days but not more than one hundred eighty (180) days before proposing to construct a pipeline in Indiana. The notice required under this subsection shall be in the form and manner prescribed by the commission.**

~~(b)~~ (c) The ~~division~~ **commission** shall send, by certified mail, the following to each pipeline company that proposes to construct a pipeline in Indiana:

(1) A copy of the guidelines adopted by the division.

(2) A notice that includes the following:

(A) A statement that the division has adopted the pipeline construction guidelines included with the notice.

(B) A statement indicating:

(i) that the pipeline construction guidelines ~~have been~~ **will be** mailed to all affected landowners on the list provided by the pipeline company under section 10 of this chapter; and



(ii) that the ~~division~~ **has encouraged commission will encourage** the affected landowners to agree to the guidelines in any negotiations for easements or other land interests with the pipeline company.

~~(c)~~ **(d)** The ~~division~~ **commission** shall mail the guidelines and notice in accordance with subsection ~~(b)~~; **(c) not later than three (3) business days after:**

(1) ~~as soon as the division~~ **commission** learns of the proposed pipeline as a result of the pipeline company ~~performing one (1) or more actions described in providing the notice required under subsection (a); (b); or~~

(2) ~~not later than three (3) business days after~~ the Federal Energy Regulatory Commission provides notice under 18 CFR 157.9(a) of the pipeline company's application for a certificate of territorial authority;

whichever occurs earlier.

SECTION 5. IC 8-1-22.6-10, AS ADDED BY P.L.110-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 10. (a) ~~The~~ **Not later than the time specified in subsection (b), a pipeline company that proposes to construct a pipeline in Indiana** shall provide the ~~division~~ **commission** with the following information:

(1) A list of landowners that will be affected by the proposed construction of ~~a the~~ pipeline or a segment of ~~a the~~ pipeline in Indiana. The list must include all affected landowners that the pipeline company must provide notice to under IC 32-24-1-3(g).

(2) **The proposed route of the pipeline.**

(3) **The name and contact information for at least one (1) project coordinator whom the pipeline company will make available to provide information to, and answer questions from, the commission concerning the construction project.**

**(b) A pipeline company shall provide to the commission the information required under subsection (a):**

(1) **not later than thirty (30) days after the pipeline company provides the notice required under section 9(b) of this chapter; or**

(2) **as soon as the pipeline company determines the proposed route of the pipeline;**

**whichever occurs earlier.**

~~(b)~~ **(c)** The ~~division~~ **commission** shall send by ~~certified mail~~; the following to each affected landowner:

(1) A copy of, or reference to, the guidelines adopted by the



division.

(2) A notice that includes the following:

(A) A statement that the division has adopted the pipeline construction guidelines included with, or referenced in, the notice.

(B) A statement indicating that the pipeline construction guidelines have been mailed to the pipeline company. The statement required by this clause must specify a date after which the affected landowner may contact a toll free telephone number established by the ~~division~~ **commission** to provide information on the status of any construction guidelines agreed to by the pipeline company.

(C) A statement indicating that any guidelines agreed to by the pipeline company shall not be binding on the pipeline company or affected landowners but may be used by the pipeline company and an individual landowner to simplify negotiations involved in establishing a price for any:

(i) easement; or

(ii) other interest in land;

needed by the pipeline company to construct the pipeline.

(D) A statement encouraging the affected landowner to agree to any construction guidelines that the pipeline company agrees to follow, to the extent that the landowner determines that the guidelines are not contrary to the landowner's best interests.

(E) A statement including:

(i) contact information for the one (1) or more project coordinators designated by the ~~division~~ **commission** under section 12 of this chapter;

(ii) contact information for the Federal Energy Regulatory Commission, including a local or toll free telephone number; and

(iii) the commission's web site address.

~~(c)~~ **(d)** The ~~division~~ **commission** shall ~~mail~~ **send** the information required under subsection ~~(b)~~ **(c)** not later than ~~twenty (20)~~ **thirty (30)** days after the ~~division~~ **commission** is notified by the pipeline company of the proposed route and is provided with a list of the affected landowners as required by subsection (a).

SECTION 6. IC 8-1-22.6-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 10.5. A pipeline project coordinator designated by a pipeline company under section**



10(a)(3) of this chapter with respect to a particular pipeline project shall provide to each project coordinator designated by the chairman of the commission under section 12 of this chapter with respect to the project the following information not later than five (5) business days after the pipeline's project coordinator learns of the information:

(1) Information about public hearings or meetings that are scheduled in connection with the pipeline project.

(2) Other information concerning the pipeline project that the pipeline company considers relevant or of likely concern to Indiana residents.

(3) Any information requested by any project coordinator designated by the chairman of the commission under section 12 of this chapter with respect to the project.

SECTION 7. IC 8-1-22.6-11, AS ADDED BY P.L.110-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 11. The ~~division~~ **commission** shall encourage pipeline companies to use the guidelines as a starting point for any negotiations with the various state agencies identified in the guidelines. The ~~division~~ **commission** may require a pipeline company proposing to construct a pipeline or a segment of a pipeline to sign a statement indicating whether or not the pipeline company agrees to use the guidelines for the project.

SECTION 8. IC 8-1-22.6-12, AS ADDED BY P.L.110-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 12. For each proposed or ongoing pipeline project in Indiana, the ~~director~~ **chairman** of the ~~division~~ **commission** shall designate one (1) or more employees of the ~~division~~ **commission** to serve as project coordinators for the ~~division~~ **commission**. The ~~director~~ **chairman** shall ensure that one (1) or more of the coordinators designated under this section are responsible for the following duties concerning the project:

(1) Monitoring all:

(A) filings with; and

(B) proceedings before;

the Federal Energy Regulatory Commission.

(2) Attending all public hearings or meetings concerning the project that are held in Indiana.

(3) Receiving and responding to questions and complaints about the project from Indiana residents.

(4) Updating the information required to be made available on the commission's web site under section 13 of this chapter.





(5) Any other duties assigned by the ~~director~~ **chairman** of the ~~division~~ **commission**.

SECTION 9. IC 8-1-22.6-13, AS ADDED BY P.L.110-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 13. (a) The ~~division~~ **commission** shall make the following available on the commission's web site:

(1) A link to the guidelines adopted by the division.

(2) For each proposed or ongoing pipeline construction project in Indiana, the following information:

(A) A description of the pipeline company and the pipeline project, including:

(i) the pipeline's location, purpose, and construction schedule; and

(ii) the docket number assigned to the project by the Federal Energy Regulatory Commission **or a statement that there is no docketed proceeding before the Federal Energy Regulatory Commission with respect to the project, as applicable.**

(B) Contact information for the pipeline company, including a local or toll free telephone number.

(C) Contact information for the Federal Energy Regulatory Commission, including a local or toll free telephone number.

(D) Contact information for the one (1) or more project coordinators designated under section 12 of this chapter to receive and respond to questions and complaints from Indiana residents.

(E) Information on public hearings or meetings that are scheduled in connection with the pipeline project.

(F) Other information concerning the pipeline project that the ~~division~~ **commission** considers relevant or of likely concern to Indiana residents.

(b) The ~~division~~ **commission** shall update the information required under subsection (a)(1) whenever:

(1) one (1) or more guidelines adopted by the division are revised or superseded by the division; or

(2) one (1) or more new guidelines are adopted by the division.

(c) The ~~division~~ **commission** shall update the information required under subsection (a)(2) on a regular basis throughout the course of a pipeline project. The ~~division~~ **commission** shall ensure that all information on the ~~division's~~ **commission's** web site concerning a pipeline project is accurate, current, and accessible. The ~~director~~ **chairman** of the ~~division~~ **commission** shall assign the responsibility



of complying with this subsection to one (1) or more project coordinators designated under section 12 of this chapter.

SECTION 10. IC 32-24-1-3, AS AMENDED BY P.L.110-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. (a) Any person that may exercise the power of eminent domain for any public use under any statute may exercise the power only in the manner provided in this article, except as otherwise provided by law.

(b) Except as provided in subsection (g), before proceeding to condemn, the person:

(1) may enter upon any land to examine and survey the property sought to be acquired; and

(2) must make an effort to purchase for the use intended the land **or the** right-of-way, easement, or other interest in the property.

(c) The effort to purchase under subsection (b)(2) must include the following:

(1) Establishing a proposed purchase price for the property.

(2) Providing the owner of the property with an appraisal or other evidence used to establish the proposed purchase price.

(3) Conducting good faith negotiations with the owner of the property.

(d) If the land or interest in the land, or property or right is owned by a person who is an incapacitated person (as defined in IC 29-3-1-7.5) or less than eighteen (18) years of age, the person seeking to acquire the property may purchase the property from the guardian of the incapacitated person or person less than eighteen (18) years of age. If the purchase is approved by the court appointing the guardian and the approval is written upon the face of the deed, the conveyance of the property purchased and the deed made and approved by the court are valid and binding upon the incapacitated person or persons less than eighteen (18) years of age.

(e) The deed given, when executed instead of condemnation, conveys only the interest stated in the deed.

(f) If property is taken by proceedings under this article, the entire fee simple title may be taken and acquired.

(g) This subsection applies to a public utility (as defined in ~~IC 32-24-1-5.9(a)~~ **section 5.9(a) of this chapter**) or a pipeline company (as defined in IC 8-1-22.6-7). If a public utility or a pipeline company seeks to acquire land or an interest in land under this article, the public utility or pipeline company may not enter upon the land to examine or survey the property sought to be acquired unless ~~either of~~ the following ~~occur~~ **apply**:



(1) **Any of the following applies:**

(A) The public utility or the pipeline company sends notice by certified mail to the **property owner or the** affected landowner (as defined in IC 8-1-22.6-2), **as applicable**, of the public utility's or the pipeline company's intention to enter upon the **property owner's or affected** landowner's property for survey purposes. The notice required by this ~~subdivision~~ **clause** must be mailed not later than fourteen (14) days before the date of the public utility's or the pipeline company's proposed examination or survey.

~~(2)~~ (B) The public utility or the pipeline company receives the **property owner's or affected** landowner's signed consent to enter the property to perform the proposed examination or survey.

(C) **In the case of a pipeline company, the pipeline company enters the land to examine or survey the property on a date that is at least three (3) business days after the date that the notice described in IC 8-1-22.6-10(c) is sent by the Indiana utility regulatory commission to the affected landowner.**

(2) **In the case of a pipeline company, the pipeline company complies with IC 8-1-22.6-9(b) and IC 8-1-22.6-10(a).**

A **property owner** or an affected landowner may bring an action to enforce this subsection in the circuit court of the county in which the **property owner's or affected** landowner's property is located. A prevailing **property owner or affected** landowner is entitled to the **property owner's or affected** landowner's actual damages as a result of the public utility's or the pipeline company's violation. In addition, the court may award a prevailing **property owner or an affected** landowner reasonable costs of the action and attorney's fees.

SECTION 11. IC 32-24-4-1, AS AMENDED BY P.L.163-2006, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) **Except as provided in subsection (c)**, a person, firm, partnership, limited liability company, or corporation authorized to do business in Indiana and authorized to:

(1) furnish, supply, transmit, transport or distribute electrical energy, gas, oil, petroleum, water, heat, steam, hydraulic power, or communications by telegraph or telephone to the public or to any town or city; or

(2) construct, maintain or operate turnpikes, toll bridges, canals, public landings, wharves, ferries, dams, aqueducts, street railways, or interurban railways for the use of the public or for the



1           use of any town or city;  
2           may take, acquire, condemn, and appropriate land, real estate, or any  
3           interest in the land or real estate to accomplish the essential delivery of  
4           services described in subdivisions (1) and (2).  
5           (b) A person described in subsection (a) has all accommodations,  
6           rights, and privileges necessary to accomplish the use for which the  
7           property is taken. A person acting under subsection (a) may use  
8           acquired, condemned, or appropriated land to construct railroad siding,  
9           switch, or industrial tracks connecting its plant or facilities with the  
10          tracks of any common carrier.  
11          **(c) This section does not apply to a pipeline company (as defined**  
12          **in IC 8-1-22.6-7) until the pipeline company complies with**  
13          **IC 8-1-22.6-9(b) and IC 8-1-22.6-10(a).**

